

DOCKET NO: 286173US6PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

:

NOZOMU OKUZAWA

: EXAMINER: BROMELL, A. Y.

SERIAL NO: 10/568,968

:

FILED: FEBRUARY 22, 2006

: GROUP ART UNIT: 2167

FOR: INFORMATION TRANSMITTING
APPARATUS, TERMINAL APPARATUS
AND METHOD THEREOF

:

PROVISIONAL ELECTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Restriction Requirement dated October 21, 2008, Applicant provisionally elects, with traverse, Group I, Claims 1, 11-15, 21-25, 31, and 32, drawn to an apparatus, method, and medium for information transfer, classified in class 707, subclass 3, for further examination on the merits. Applicant reserves the right to file one or more divisional applications directed to the non-elected invention.

Applicant respectfully traverses this Restriction Requirement for the reason that Groups I and II have not been treated relative to making a showing of a lack of "unity of invention," as required by MPEP § 1893.03(d) and 37 C.F.R. § 1.475, since this is a national stage application filed under 35 U.S.C. § 371. Clearly, MPEP § 800 and U.S. restriction practice based upon distinctness cannot be used.

In this regard, MPEP § 1893.03(d) establishes that the Examiner "must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group

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(i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group" (emphasis added). While the Requirement does list the different groups of claims, it DOES NOT "(2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group" (emphasis added). Instead, the outstanding Requirement cited MPEP § 806.05(d), improperly using U.S. restriction practice rather than "unity of invention" practice.

Consequently, since the Requirement incorrectly uses U.S. restriction practice under MPEP § 800 instead of the required "unity of invention" practice under MPEP § 1893.03(d), Applicant respectfully submits that the Restriction Requirement should be withdrawn and that an action on the merits as to all of the pending claims is in order.

However, if the present Restriction Requirement is not withdrawn, examination on the merits of the claims of Group I is believed to be in order, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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